IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8681 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K R JOSHI

Versus

GUJARAT UNIVERSITY

Appearance:

MR CL SONI for Petitioner

None present for Respondent No. 1

MR PREMAL JOSHI for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/10/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. I find sufficient merits in the contention of learned counsel for the petitioner that the impugned order under which the pay of the petitioner has been reduced and further recovery is ordered of Rs.18,000/= and odd has been passed without notice and opportunity of hearing to the petitioner. Though on this short ground this matter could have been disposed of, otherwise also, after

hearing the learned counsel for the petitioner, I am satisfied that on merits, he has very strong case. Under the order Annexure-D at page No.21, dated 26.6.1984, the petitioner was given appointment on the post of Controller of Examinations on the recommendation of the Executive Council. Section 20 of the Gujarat Universities Act provides that the Executive Council has powers to appoint academic, administrative and other staff of the University, fix their emoluments and define their duties and conditions of service and to take disciplinary action against them.

#. The learned counsel for the petitioner contended that this appointment was not only given but the pay of the petitioner at Rs.1480/in the pay scale of Rs.1100-1600 was fixed by the Executive Council.

#. Reply to the special civil application has not been filed by any of the respondents and in the absence of reply to the special civil application, these factual averments made by petitioner have to be taken to be correct.

#. The learned counsel for respondents No.2 and 3 contended that the Ordinance provides that this is not permissible to the University, but Ordinance cannot supersede the provisions of the Act.

#. As a result of aforesaid discussion, this petition succeeds and the same is allowed and it is hereby declared that the petitioner is entitled for the basic pay of Rs.4200/- and on the basis of that basic pay his pensionary benefits have to be determined and accordingly the arrears to be paid. Similarly, the order of respondents to ask the petitioner to refund Rs.18,009=60 is declared to be illegal and arbitrary. This amount has been recovered from the petitioner and the respondent-University is directed to refund this amount to the petitioner with interest thereon at the rate of 18% p.a.

#. The claim of the petitioner for interest on delayed payment of retiral benefits as per his basic pay fixed also deserves acceptance. However, I find sufficient merits in the contention of the learned counsel for the respondent-State that this delay is attributable to the University as the University has made delay in sending papers and it is liable to make payment of interest on this amount. Accordingly, the respondent No.1 is directed to pay interest at the rate of 18% p.a. on the retiral benefits which have been paid to the petitioner

from the date of retirement till the date of payment thereof. The calculation of this amount be made within a period of one month from the date of receipt of writ of this order and thereafter this amount be paid to the petitioner within fifteen days next. Rule is made absolute accordingly.

#. Though it is a fit case where costs are to be awarded against respondents No.1, 2 and 3, the learned counsel for the petitioner states that he has not charged any fees from the petitioner and has provided free legal aid to the petitioner. No order as to costs.

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(sunil)